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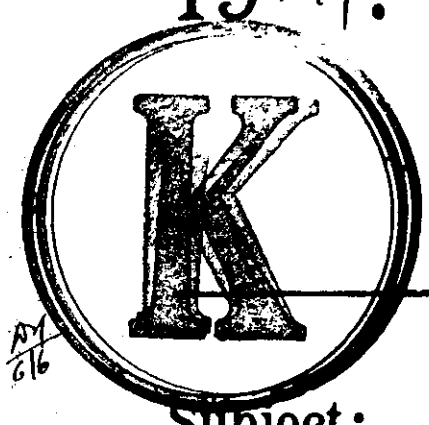
File No. 0 Merchant Shipping 149



Legal DEPARTMENT

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Subject:—

opinions ~~and~~ regarding Merchant Shipping Act.

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File No. 0 merchant Shipping 149

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C O N T E N T S.

Legal Department File No. O. Merchant Shipping/1949.

Sr.No.	R.I/O.No.	Subject	pages.
		Opinion regarding Merchant Shipping Act.	
1.	9157 12/8/49	Question whether under sec.687 of the Merchant Shipping Act, 1894 read with clause 33 of the letter Patent, the Bombay High Court his juridiction to try the accused, a Ceylonese Seemen, who stabbed another seaman on board S.S.City of Canterbuny registered in the united kingdom while she she was lying at enchor at Lourencs Marquess, ax part in Portugues East Africa.	1-6.

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7/16

JPE.1/6/56
5 copies.

No.9157
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 12th August 1949.

To

The Commissioner of Police,
Bombay.

Subject:- Yellowgate Police Station C.R.No.291
/49 Jurisdiction of the Bombay High Court.

Sir,

With reference to your letter No.11201 C.P.P. dated the 17th June 1949 on thesubject noted above, I am forwarding herewith my opinion in the matter, together with the case papers received with your letter.

Yours faithfully

Id/- P.M.L,
Remembrancer of Legal Affairs.

JPE.1/6/56.
4 copies.

Office of the R.L.A.

The accused Mohomed Yusuf, a Ceylonese seaman, stabbed another seaman Abubaker on 31-1-1949 on board S.S. CITY OF CANTERBURRY registered in the United Kingdom while she was lying at anchor at Lourenco Marquess, a port in Portugues East Africa. On arrival of the vessel at Bombay the accused was handed over the Yellow Gate Police Station for being tried here at the instance of the British Consul at Beira. The Chief Police Prosecutor opines that the Courts here have no jurisdiction to try the accused as he is a foreigner and the offence took place in a foreign country and in a non-Indian ship. He relies on the decision in the case of Emperor v. Punja Gani (20 Bom.L.R.P.98). The papers were submitted by the Deputy High Commissioner for United Kingdom in Bombay to the Commonwealth Relations Office at London. That Office has opined that under section 687 of the Merchant Shipping Act, 1894, read with clause 33 of the Letters Patent, the Bombay High Court has jurisdiction to try the accused. As the question of jurisdiction is involved in this case, the Polic Commissioner requests the R.L.A to advise.

2. Emperor v. Punja Gani (20 Bom.L.R. p. 98) has no application to the facts stated above. That was not the case of the British ship and the offence was also not committed within the admiralty jurisdiction. The accused in this case appears to be a British Subject; for his discharge certificate shows that he

was borne at Colombo. 'British Subject' as defined in the British Nationality and Status of Aliens Act,1914, as subsequently amended, means a person who is a natural born British subject. The cases would, therefore, be governed more by section 686 of the Merchant Shipping Act, 1894, and not by section 687 for the offence in this case is committed actually on board a British ship in a foreign port and not at any place either ashore or afloat out of Her Majesty's dominions. Section 686 provides that "where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port, or harbour... ...and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed." The accused who has now been conveyed to Bombay must now be deemed to be found within the jurisdiction of the Bombay Courts and King Emperor v. The Chief Officer of S.S.MUGHTARI (I.L.R. 26 Bombay 636) supplies the authority for the proposition that a Presidency Magistrate has the power to charge, convict and sentence the accused, although a different view seem to have been taken by the Calcutta High Court.

Id/- P.M.L.
12/8
Remembrancer of Legal Affairs.

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4 copies.